

Status; application for recognition; corporate successor to nonexempt association. An organization that filed an application for recognition of exemption under section 501(c)(3) of the Code in May 1976, following its incorporation in November 1975 to succeed an unincorporated association that had operated for three years without filing an application, will be recognized as exempt from the date of incorporation. An advance ruling concerning the organization's private foundation status may be requested on the basis of support received since incorporation.

'Advice has been requested on the proper application of sections 508 and 509 of the Internal Revenue Code of 1954 under the circumstances described below.

'In May 1976, an organization that had incorporated in November 1975 filed a Form 1023, Application for Recognition of Exemption under section 501(c)(3) of the Internal Revenue Code, on which it declared that it was not a private foundation because it was publicly supported within the meaning of section 509(a)(2). It was the successor to an unincorporated association, created in 1972, that had operated for three years without ever filing a Form 1023. Incorporation was the only difference between the two entities.

'The specific questions to be resolved are whether the corporation, which is otherwise qualified for exemption from Federal income tax under section 501(c)(3), should be so recognized from either the date of its incorporation or the date of its filing the Form 1023 and whether it is entitled to a ruling that it is not a private foundation.

'Section 508(a)(1) of the Code provides, with certain exceptions, that an organization organized after October 9, Sec.969, shall not be treated as an organization described in section 501(c)(3) unless it has given notice to the Secretary or his delegate that it is applying for recognition of such status. If the notice is given after the time prescribed in the regulations, section 508(a)(2) provides that the organization shall not be treated as an organization described in section 501(c)(3) for any period before the giving of such notice.

'Section 1.508-1(a)(2)(i) of the Income Tax Regulations provides that the required notice is filed by the submission of a properly completed and executed Form 1023 within 15 months from the end of the month in which the organization was organized.

'Section 1.509(a)-(3)(c)(iv) of the regulations provides that an organization must have been in existence for at least 1 taxable year consisting of at least 8 months in order to establish that it is not a private foundation by virtue of section 509(a)(2) of the Code. When an organization does not meet this time requirement, section 1.509(a)-3(d)(1) of the regulations allows it to request a

ruling or determination letter that it will be treated as a section 509(a)(2) organization for its first 2 taxable years (or its first 3 taxable years, if its first taxable year consists of less than 8 months). Such an advance ruling or determination letter may be issued if the organization can reasonably be expected to meet the requirements for being publicly supported during the applicable advance ruling period.

Rev. Rul. 77-208, 1977-1 C.B. 153, holds that an organization that did not file a timely Form 1023 is treated as described in section 501(c)(3) of the Code for purposes of both exemption and foundation status only as of the date of its application for exemption. It is considered a new organization as of that date in determining whether it is normally publicly supported.

'Rev. Rul. 73-422, 1973-2 C.B. 70, holds that, where the only change has been incorporation, the period of time a section 501(c)(3) predecessor unincorporated association operated will be taken into consideration in determining whether an organization is entitled to a ruling that it is described in section 509(a)(2) of the Code.

'Rev. Rul. 77-116, 1977-1 C.B. 155, holds that support received by an organization during a period it was not described in section 501(c)(3) of the Code will not be considered in determining the organization's private foundation status under section 509(a)(2).

'Rev. Rul. 67-390, 1967-2 C.B. 179, indicates that when an unincorporated association incorporates, a new legal entity is created by the incorporation. Thus, the unincorporated association and the corporation are separate organizations for purposes of applying the notice requirements of section 508 of the Code.

'The corporation, as a new legal entity, is required to file the notice described in section 508(a) of the Code in order to have its exemption recognized under section 501(c)(3) and to establish that it is not a private foundation. This requirement was satisfied by the exemption application that it filed in May 1976 which was within the 15-month period dating from its incorporation in November 1975. Accordingly, exemption under section 501(c)(3) may be recognized beginning with the date of incorporation rather than the filing date of the application.

However, the corporation does not have a taxable year of at least 8 months in order to establish that it is publicly supported within the meaning of section 509(a)(2) of the Code. Because the predecessor unincorporated association never filed the notice required by section 508(a), it may not be treated as an organization described in section 501(c)(3). Rev. Rul. 73-422 is not applicable because the predecessor unincorporated organization described there was exempt. Consistent with Rev. Ruls. 77-208 and 77-116 support received before the date of incorporation may not

be considered in determining whether the organization meets the requirements of section 509(a)(2). The organization may, however, request an advance ruling on the basis of the support received since incorporation.